

MINUTES

**MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY

Call to Order: By **CHAIRMAN BRENT R. CROMLEY**, on February 9, 2005
at 3:00 P.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Brent R. Cromley, Chairman (D)
Sen. John Cobb (R)
Sen. John Esp (R)
Sen. Duane Grimes (R)
Sen. Lynda Moss (D)
Sen. Jerry O'Neil (R)
Sen. Trudi Schmidt (D)
Sen. Dan Weinberg (D)
Sen. Carol Williams (D)

Members Excused: None.

Members Absent: None.

Staff Present: David Niss, Legislative Branch
Rita Tenneson, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SB 324, 1/31/2005
Executive Action: SB 101; SB 310

There will be no accurate tape counts on these minutes. The tape recorder was not working properly and some of the tapes were destroyed by the recorder.

HEARING ON SB 324

Opening Statement by Sponsor:

SEN. JON TESTER (D), **SD 15**, opened the hearing on **SB 324**, Prescription drug assistance and discount programs.

SEN. TESTER told the Committee the bill will begin to make affordable health care a reality for Montanans. He said seniors should not have to choose between eating and filling their medication. Brand name drugs have increased three times and generic drugs four times the rate of inflation. In Montana, there are 173,000 uninsured Montanans paying out of pocket and 143,000 Medicare beneficiaries, seniors and disabled paying for drugs out of pocket or buying expensive supplemental plans. He added that the bill consists of three main parts. Part one extends pharmaceutical drug benefits to 20,000 low income seniors or disabled, making less than \$18,620 a year. Part two creates a pharmacy discount program, Rx plus, for uninsured Montanans earning less than \$23,275 a year. The third part opens dialogue between pharmacists and patients to discuss suitable less expensive prescription drug options. **SEN. TESTER** presented amendments which he explained to the Committee.

EXHIBIT (phs32a01)

{Tape: 1; Side: A; Approx. Time Counter: 0 - 4.2}

Proponents' Testimony:

Del Lonnquist, Volunteer Advocate, American Association of Retired People (AARP) Montana, explained that he was retired and his wife is on several prescription drugs. Things are getting tight. His doctor informed him he should be taking several prescription drugs. He told his doctor he will exercise more and eat his fruits and vegetables because he cannot afford prescriptions drugs in Montana. He said he could pay 50 cents for a pill in Canada which costs a dollar in Montana. He was not asking for a free handout. He was counting on the Committee, and **SEN. TESTER**, to make drugs affordable.

Anna Whiting Sorrell, Governor Schweitzer's Policy Advisor, said this has been a major concern in the Governor's office. I-149 stipulated a portion of funds to go toward a new prescription drug program. They strongly supported **SB 324**.

Claudia Clifford, Advocacy Consultant, AARP Montana, rose in support. She gave the Committee a red folder containing information pertaining to a survey AARP has done, regarding affordable drugs, and the impact on senior citizens.

[EXHIBIT \(phs32a02\)](#)

[EXHIBIT \(phs32a03\)](#)

Peter Wolfgran, Pharmacist, spoke in favor. They already consult with patients regarding less expensive drug options. He suggested an amendment refusing mail-order prescriptions drugs. He told the Committee that 118 independent pharmacists pay State income tax on \$175,000,000. He felt mail-order drugs would put 800 people out of work and they would have to sign up for the program. He did not endorse mail order.

John Morrison, Montana State Auditor, said as Insurance Commissioner for the State of Montana, he has worked the last four years to address insurance in the State. The rise of health care and prescription drugs has been a major concern. He felt the bill provides affordable prescriptions drugs, and the people of Montana spoke out, when they overwhelmingly passed I-149 on the ballot.

REP. DON ROBERTS, HD 56, BILLINGS said, because of the high cost of health care, 28% of his cardiac patients have to make the choice between medication, food or utilities. One \$120.00 medication will buy a lot of food. This bill will be a big help.

Boyd Fowler, AARP volunteer, said one of his medications costs over \$400.00 a month, and he has a friend who pays \$278 a month. Some people he knows pay as much as \$5000.00 a year out of pocket expenses for drugs. He said this bill is a high priority and urged support.

Bill Kennedy, Yellowstone County Commissioner and Montana Association of Counties said this is the only bill that will help with pharmaceutical pricing during this session.

Beverly Robinson, representing her husband and herself, said she and her husband haven't been able to afford their prescriptions.

[EXHIBIT \(phs32a04\)](#)

Jim Smith, Montana Pharmaceutical Association, thanked **SEN. TESTER** for the work he has put into the bill. Pharmacies have little to say over the price of drugs. He didn't want senior citizens getting drugs from mail-order. He asked the Committee to put a no mail-order provision in the bill.

Betty Beverly, Executive Director, Senior Citizens Association, said seniors have been going to Canada and Arizona to save money on drugs. One bus trip to Canada saved up to \$30,000.00 on drugs. She gets 3 to 4 calls a week from seniors about getting their drugs in Canada. Some seniors, on fixed incomes, have stopped taking their drugs because they simply can't afford them.

Jim Ahmens, Chairman, Alliance Foundation of Montana, said 25 members were represented here today. The Alliance was the key force behind I-149 and how the trust fund should be used. I-149 has one hundred million dollars, based on cigarette and tobacco tax. The money for the program is in hand.

Chuck Hunter, Department of Health and Human Services, (DPHHS), brought some amendments and said they refer to setting up the discount program. He gave them to the Committee and went over the amendments at this time.

EXHIBIT (phs32a05)

Del Lonnquist, AARP said Lipitor costs \$200-\$300 a month. Medicine is a lot less in Canada. You will pay fifty cents a pill in Canada and \$1.00 for the same pill in Montana. He said he is counting on the Committee to make this fair for Montanans.

Opponents' Testimony:

Anthony Wisniewski, Policy Attorney, Pharmaceutical Research and Manufacturers of America (PHARMA), from Washington, said they put patients first, not the cost of drugs. He said the bill puts cost first, patient health second. He was opposed to the preferred drug list and access restrictions on manufacturers who don't comply. The federal government wants to be able to approve these programs because it leverages Medicaid. He said companies have private patient assistance programs. Individual drug company programs provide approximately 17.8 million free prescriptions to those who are qualified. He gave the Committee information on preferred drug lists and comparable savings.

EXHIBIT (phs32a06)

Keith Colbo, Pfizer, said the first three sections of the bill, Pfizer supports strongly. He referred to Section 5 and the Together RX Access Card. He went over this information and it is contained in the following exhibit. He said they were concerned with Section 7, the amendment to 53-6-1010, sub 2 MCA; "the information disclosed by manufacturers during negotiations and all terms and conditions negotiated between the director and manufacturers and all information requested or required under the

program are public information except for information the department determines is proprietary information." This part of the bill would cause problems with pricing on the patient drug list as it is worded. Pfizer is willing to work with the Governor, and the sponsor of the bill, to further compare the benefits of the Together Rx Program and to provide expert resources.

EXHIBIT (phs32a07)

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. GRIMES asked **Mr. Hunter** about Medicaid leveraging and whether a waiver or approval would be needed. **Mr. Hunter** said, the federal Medicaid officials were concerned, because many of those programs were based upon leveraging Medicaid discount, and getting no further state funds into the program, forcing the pharmaceutical companies to pay the whole cost of the program from rebates. He believes this is different, as State money is involved and there is no requirement or expansion of the Medicaid population. **SEN. GRIMES** asked if a letter or finding from Medicaid regarding this proposal would be beneficial. **Mr. Hunter** said they could request this. They have had an answer from the regional office which said, as long as it is funded with state monies, it is not a Medicaid expansion population.

SEN. COBB asked if there was I-149 money in the Rx plus or if it was just a rebate. **Mr. Hunter** said there are two pieces in the bill, I-149 money in the pharmacy access, but no money in the rebate program. **SEN. COBB** understood I-149 covered seniors, but children, chronically ill and disabled persons were not covered under I-149. **Mr. Hunter** said that was right, the discount program is to be funded solely from the rebate available. **SEN. COBB** thought the bill should be tightened up regarding the rebates.

SEN. WEINBERG asked **Mr. Colbo** how many Montanans would qualify under Rx access. **Mr. Colbo** didn't have the exact figure. **SEN. WEINBERG** thought it was important to know which proposal served the most people under what cost. **Mr. Colbo** said he would be happy to get the numbers and the impact for him.

SEN. O'NEIL asked **Mr. Wisniewski** if the State of Montana was telling him that, when selling his pharmaceuticals, he would have to give the state a rebate and the rebate would be used to buy generic drugs. **Mr. Wisniewski** was not sure if the proposed

Montana program includes generic drugs. His position is that pharmaceutical companies are told to participate or access to their drugs will be restricted to Montana Medicaid patients.

SEN. WILLIAMS told **Mr. Wisniewski** she couldn't pick up a magazine, or watch T.V. without seeing multiple drug adds. She asked him if he would provide the Committee with the cost of advertising for pharmaceutical companies and how it drives up drug costs.

SEN. WEINBERG asked **Mrs. Clifford** if she had any idea about how many people would be covered under these programs. **Mrs. Clifford** said the fiscal note gives estimates of the number of people. For the pharmacy access program, part d, there is an estimate of about 28,000 Montanans eligible and about 20,000 of those are expected to take advantage of the Rx access program. For the Rx plus, they have 120 to 150 uninsured people who could qualify. The fiscal notes estimates 60,000 people will sign up and get one of the cards. The program with pharmacists consulting with people, has no estimate, but anyone is eligible to take advantage of this consulting service. **SEN. WEINBERG** asked what mechanism was in place for somebody, under Rx plus, if they acquire other insurance and how they become aware of that. **Mrs. Clifford** thought the department would have to come up with a solution but, if you have insurance and present it at the pharmacy, the pharmacist will know and will not give the discount.

SEN. GRIMES asked **Mrs. Clifford** if the department would be restricting choice under the department's formulary of preferred drugs, then adding drugs to the list as they become available. **Mrs. Clifford** said Medicaid is in the midst of putting together a formula, and it has its own rules, along with an administrator who will leverage rebates for the Medicaid program. This is separate from the Rx plus, but it can parallel. This same administrator, under Rx plus card, can use the same formulary list and try to get rebates for the Rx plus deeper discount. **SEN. GRIMES** asked if the department would set the price for the discount approach or would it match what the Medicaid discount is. **Mrs. Clifford** said the first discount is what the pharmacist gives them through selling them the drug at Medicaid prices. The second type of discount, a deeper discount, will come when the department has enough funds, from their list of drugs, that they can provide an additional discount. This has been the experience in Maine, Vermont and Hawaii where this program was started. **SEN. GRIMES** understood the department will negotiate the rebates. **Mrs. Clifford** told him the department has a contract with an entity called First Health who will be negotiating the rebate. There is now a multi-state pool using First Health as their negotiator. **SEN. GRIMES** asked if the formulary price, that will

determine whether or not a drug is allowed on the formulary, will be based on that negotiated price. **Mrs. Clifford** said the department has a committee of people who get information from First Health, and information from the research entity in Oregon. They decide which drug is put on the formulary list.

SEN. COBB told **SEN. TESTER** he wasn't sure about the bill being sustainable. He thought he heard him say the money was coming from interest from the coal tax, or it was coming out of I-149.

SEN. TESTER said there is money from the seventeen million the Governor's budget puts aside and money from the tobacco settlement fund, which accrues over the 2006-2007 biennium. **SEN. COBB** asked if he mentioned coal tax and **SEN. TESTER** said he didn't. **SEN. COBB** thought I-149, based on the Budget Office, went broke in 2111 and he was trying to figure out how to sustain it. **SEN. TESTER** said they should get Budget Director, Ewer, up here to address that in its entirety.

Closing by Sponsor:

SEN. TESTER thanked the Chairman and members of the Committee, as well as proponents and opponents who talked about **SB 324**. He said he did not want the Committee to morph this into a sales tax bill. People are forced into making choices. These choices are for critical needs they have. **SB 324** offers assistance to an area in dire need of assistance, prescription drugs. He added there is a quality of life issue here, with people making a decision whether to buy food, or take the full dose of medicine they need. Soon prescription drugs will be affordable only for the rich. He encouraged the Committee to pass the bill so the people of Montana could have access to the affordability of health care in the State of Montana.

EXECUTIVE ACTION ON SB 101

Motion: **SEN. SCHMIDT** moved that **SB 101 DO PASS**.

Discussion: **SEN. SCHMIDT** said the bill had two amendments, **SB010101.asb** and **SB010101.adn**. She said the people do not want to work with the department on licensure, they would like to work solely with the Department of Labor. There is a competing bill in the House that puts licensure with the Department of Labor. DPHHS had two meetings, one in the counsel area and one in Great Falls addressing this issue. These are therapeutic boarding schools, emotional growth schools, special purpose schools, therapeutic group homes, and private group homes. There are 29 that are known of and are primarily in the Rexford-Thompson Falls

areas. She told the Committee that this is the amendment background.

[EXHIBIT \(phs32a08\)](#)

[EXHIBIT \(phs32a09\)](#)

SEN. CROMLEY asked if the amendment was to involve the other group. **SEN. SCHMIDT** said the amendment adds five from residential therapeutic places, two from DPPHS, one from the Department of Labor and one child advocate. She said they were hoping they would work together toward licensing.

Motion/Vote: **SEN. SCHMIDT** moved that SB 101 BE AMENDED WITH SB010101.ASB AND SB010101.ADN. Motion carried unanimously by voice vote.

Motion: **SEN. SCHMIDT** moved that SB 101 DO PASS AS AMENDED

Discussion: **SEN. ESP** asked **SEN. SCHMIDT** if she considered legislative participation. **SEN. SCHMIDT** said they talked about this but they thought reporting quarterly would work.

SEN. GRIMES asked if disallowing (a) and (b) for out of state students was a licensure issue. **SEN. SCHMIDT** answered that, at the Interim Committee, (a) and (b) were never brought up as an issue so they never were part of the bill. Then, when the bill was drafted, a former budget director put that in. The main issue of the department was registration, then working toward licensure. **SEN. GRIMES** said there are constitutional questions about whether we can avoid considering (a) and (b) for somebody whose parents do not reside here. **SEN. GRIMES** asked **Mr. Niss** if this eliminated the inclusion of students in the (a) and (b) calculation, because the parents do not reside here. **SEN. GRIMES** thought this was a school funding issue. **Mr. Niss** said he would like to do a little further research on it. As a general matter, discrimination distinctions, based on residency, are problematic - some more than others. **SEN. GRIMES** said opponents were concerned regulation might ruin what they are providing for needy kids.

SEN. WEINBERG asked **SEN. SCHMIDT** if she thought passage of the bill will, in a significant way, change what the schools are doing. **SEN. SCHMIDT** didn't think this was the intent. She said it is to let parents who are sending their children, most of who come from out of state, know these schools are licensed by the State of Montana. Montana is one of the only western states currently without regulating requirements for these private

places. These places want to work toward licensure for their protection and credibility.

SEN. CROMLEY said these places are also healthcare providers. He was not concerned with the ones represented in the hearing, but with the other residential therapeutic programs, which may not be as reputable and not have oversight. He was also concerned that one side likes the House Bill and one side likes the Senate Bill. This showed a lack of communication. He thought maybe the study in **SEN. SCHMIDT'S** bill and the House Bill, at some point, will collide and a subcommittee can then reconcile the differences.

Vote: Motion carried 6-3 by roll call vote with **SEN. COBB**, **SEN. GRIMES**, and **SEN. O'NEIL** voting no.

EXECUTIVE ACTION ON SB 310

Motion: **SEN. O'NEIL** moved that SB 310 DO PASS.

Motion: **SEN. O'NEIL** moved that SB 310 BE AMENDED WITH SB0310001.ADN.

Discussion: **SEN. O'NEIL** said the amendment removes Medicaid from purchasing drugs from out of the country.

Vote: Motion carried unanimously by voice vote.

Motion: **SEN. O'NEIL** moved that SB 310 DO PASS AS AMENDED.

Discussion: **SEN. O'NEIL** said it will give the Governor power to be able to purchase drugs from outside the United States. This is only for institutions, but not those on Medicaid or Medicare.

SEN. ESP shared legal and safety concerns and was not in favor of the motion.

Substitute Motion/Vote: **SEN. SCHMIDT** made a substitute motion that SB 310 BE TABLED. Substitute motion carried 8-1 by voice vote with **SEN. O'NEIL** voting no. **SEN. COBB** and **SEN. WILLIAMS** voted yes by proxy.

ADJOURNMENT

Adjournment: 5:20 P.M.

SEN. BRENT R. CROMLEY, Chairman

RITA TENNESON, Secretary

BC/rt

Additional Exhibits:

EXHIBIT ([phs32aad0.TIF](#))